

**STATEMENT OF ROBERT A. DUFEK
BEFORE THE PRESIDENTIAL COMMISSION ON THE
UNITED STATES POSTAL SERVICE
APRIL 29, 2003**

Good morning. I want to thank the Commission for this opportunity to talk with you about an issue that I have given a great deal of thought to – collective bargaining at the United States Postal Service.

My perspective is based on the 2000-2001 interest arbitration proceedings with the American Postal Workers Union, in which I served as the Postal Service's board member.

As a management advocate, I have more than 27 years of collective bargaining experience in industries from small package and overnight delivery, to trucking, coal, retail food, newspaper publishing and professional sports.

In addition, my comments are based on Morgan Lewis' institutional experience in collective bargaining under the National Labor Relations Act, the Railway Labor Act, and in the public sector.

I have three points to make.

First, I know that there has been a suggestion that the Postal Service move away from interest arbitration. This has lead to efforts to consider alternative bargaining models that could allow for a strike or lockout. One suggestion is that the Railway Labor Act – the statute applicable to the railroad and airline industries – would be a better alternative for Postal Service collective bargaining. I think a move in this direction would be a major mistake.

When the Postal Reorganization Act of 1970 brought the Postal Service under the National Labor Relations Act, it was a move towards a private sector collective bargaining model.

But Congress made an important exception to that private sector model – it did not give Postal Service unions the ultimate economic weapon of the strike and it did not give the Postal Service the reciprocal weapons of lock-out and replacement of employees.

Why? Because they understood that the mail was an essential public service. The disruption to essential mail services resulting from strikes or threatened strikes would be unacceptable to the American public, with good reason.

The Postal Service is a huge economic engine in this country. Directly and indirectly the Postal Service impacts \$900 billion of business. Moreover, it is a labor-intensive service business. There are over 650,000 unionized employees, in nine bargaining units, covering the entire country.

A strike or other labor disruption would make it virtually impossible to move the mail in a timely fashion. What would happen to that mail? During a labor dispute, it would be very difficult – if not impossible – to stockpile, or even inventory, accumulated mail.

For these reasons, the 1970 Act adopted interest arbitration as the default collective bargaining dispute resolution procedure.

In states where public employees collectively bargain, few provide for strikes by such state or municipal employees. In many jurisdictions, teachers, police and fire-fighters, sanitation workers, and public transportation workers – all of whom provide essential services – do not have a right to strike.

By using a neutral, professional labor arbitrator's binding award, crippling strikes or lock-outs are avoided. For this reason, interest arbitration is one of the most common methods used in public sector collective bargaining.

In my view, interest arbitration is clearly the best method for the resolution of bargaining disputes at the Postal Service today and in the future.

This leads me to my second point – while I believe that interest arbitration works, the specific interest arbitration provisions of the Postal Reorganization Act need to be improved. We need to make the process more expeditious and more reflective of modern collective bargaining realities.

Right now, there is a disconnect between Postal Service collective bargaining and the interest arbitration process.

The parties bargain hard, but if they fail to reach agreement, the interest arbitration process too often starts from scratch. Each side adopts a litigation position that does not reflect the progress made in bargaining.

The result – wasted time, too much risk, and too much opportunity for arbitral discretion.

To improve the process, the basic goal should be to better integrate the processes of collective bargaining with interest arbitration. The best way to do this is by substituting mandatory mediation for fact-finding.

The fact-finding procedure set forth in the Postal Reorganization Act has become a dead letter.

Both parties tend to bypass fact-finding because it is too time consuming and duplicative of interest arbitration without the end point of an award. Instead, we should substitute mandatory mediation, with a nationally recognized, highly-qualified mediator.

The statute should require either that the parties agree upon such a mediator or that one be appointed.

If a collective bargaining resolution cannot be reached through high-level mediation, then interest arbitration should occur before a three member board, chaired by the mediator, who now becomes the arbitrator.

By having the same individual serve as mediator and arbitrator, the parties can integrate the interest arbitration process with the progress made in collective bargaining. This process is called med-arb., and I think it would benefit all sides to Postal Service collective bargaining.

While the parties may feel compelled to present a full range of issues in interest arbitration, they will have an incentive to focus their presentations on those crucial issues the mediator knows divide the parties. This will expedite the process.

Now, let me touch upon my third and final point. The Commission should consider modifications in the standards and issues that are subject to negotiation and interest arbitration.

The Postal Reorganization Act requires “comparability” of wages and benefits to the private sector. This, again, was part of a Congressional effort to move the Postal Service towards a private sector model. But true comparability with the private sector requires a broader statutory standard.

For true comparability, you would have to look at ability to pay, financial performance, productivity, and total labor costs.

By focusing so narrowly on the wage comparability standard, the interest arbitration process has become hamstrung.

There is a continuous reference to comparable private sector wages without comparing the full picture of the productivity and economic trade-offs that have produced those private sector wages and benefits. This is particularly true with regard to employee benefits. The Act requires that the Postal Service maintain a benefit package based on 1970 standards. It does not authorize bargaining on the full range of employee benefits, including pensions or retiree health care.

These two issues, alone, represent over \$6 billion of a \$12 billion annual fringe benefit cost at the Postal Service and represent the fastest growing segment of fringe benefit costs both at the Postal Service and in the private sector generally.

In fact, given the demographics of the Postal Service's current workforce – where over 60 percent of career employees are now age 45 years and older – this problem will only grow worse in the years ahead.

Many of these employees are going to retire in the next 10 years. They will join a retiree population that already numbers nearly 470,000.

As this retiree population grows, the cost of retiree health care at the Postal Service will grow into a major liability that must be borne by an ever-diminishing active workforce.

Ballooning legacy costs have already burdened the unionized segment of certain private sector industries – such as coal, steel, and now airlines.

Since 1970, pension, health and welfare and other benefits have been a major topic in collective bargaining in the private sector. This has resulted in dramatic changes in private sector benefits, including changes in retiree health care, benefit cost sharing, benefit COLAs, and shifts from defined benefit pension plans to 401(k) and cash balance plans.

Let me be clear here. I'm not proposing any specific changes for the Postal Service. All I'm suggesting is that whether any or all of these innovations are appropriate for the Postal Service should be a subject for collective bargaining.

Under current law, the Postal Service cannot find collective bargaining solutions and trade-offs in these areas that might offset the cost of the Postal employee wage and benefit package.

So, in conclusion, I believe the movement towards a private sector model for collective bargaining, begun with the Postal Reorganization Act, should continue.

There should be due consideration, however, for the essential service aspects of the Postal Service.

Interest arbitration should be retained, but reformed; the “comparability” standard should be modified to include the Postal Service’s financial and competitive position; and the collective bargaining process should be opened to a full range of benefit issues, including pensions and retiree health care.

Thank you. I’d be happy to answer any questions you may have.